U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

AWARD AND ADMINISTRATION OF CONTRACT NO. 1425-2-CC-40-12260 WITH ENVIRONMENTAL CHEMICAL CORPORATION RELATED TO THE SUMMITVILLE MINE SITE CLEANUP, BUREAU OF RECLAMATION

REPORT NO. 96-I-313
MARCH 1996

The nonpublic version of this report contains proprietary information that is exempt from disclosure under the Freedom of Information Act. This public version of the report, therefore, has been edited to delete the proprietary information. In all other respects, this report is identical to the nonpublic version.

United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

MAR 21 1996

MEMORANDUM

TO: The Secretary

FROM: Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Award and Administration of Contract No. 1425-2-CC-40-12260 With Environmental Chemical Corporation Related to the Summitville Mine Site Cleanup, Bureau of Reclamation" (No. 96-I-313)

Attached for your information is a copy of the subject final report.

In December 1992, the Environmental Protection Agency selected the Bureau of Reclamation to assist in the cleanup of the Summitville Mine site because the Bureau already had a firm under contract, Environmental Chemical Corporation, that the Agency believed could provide the necessary services and because the Agency believed that the Bureau had the necessary contract management resources to administer the contract The Bureau's contract with the Corporation, enacted in July 1992, had been awarded under the Small Business Administration's section 8(a) program for socially and economically disadvantaged contractors. The purpose of the contract was to provide assistance to the Bureau in the cleanup of various hazardous waste sites (Summitville was not part of this contract) and was for an amount not to exceed $500,000. After entering into agreements with the Agency, the Bureau and the Small Business Administration executed nine delivery orders, through September 14, 1995, for $69 million with the Corporation for work on the Summitville cleanup project The total cost of the Summittville cleanup is estimated at $120 million.

We concluded that the Bureau did not ensure that costs to the Government resulting from the award of delivery orders under the contract were fair and reasonable. This occurred because the Bureau did not (1) adequately evaluate the Corporation's proposed costs; (2) evaluate the efficiency and effectiveness of the Corporation's purchasing system; (3) and consider alternative contractors for portions of the cleanup effort. As a result, the amount billed by the Corporation for the period ending December 31, 1994, which was based on negotiated contract rates exceeded actual costs by $5.3 million. This amount was in addition to profit negotiated into contract prices. Further, we believe that, because the delivery orders for the

Summitville project were beyond the scope of the initial contract award, the Bureau should have performed further analyses of the qualifications of the Corporation and the method of procurement. For example, the fact that the Corporation subcontracted most of the production work for three delivery orders, totaling $12.5 million, suggests that the Bureau may have had the opportunity to reduce costs by contracting directly with the subcontractors, thereby avoiding the Corporation's overhead and profit on these orders,

Regarding contract administration, we found that the Bureau did not establish formal written inspection procedures or document the Corporation's performance to ensure that hours, equipment, and materials billed were accurate and reasonable. Also, on four occasion, the Bureau incurred costs on the Summitville cleanup project in excess of funds that were authorized. Finally, the Bureau paid a fee to the Corporation that may represent an unallowable interest payment or additional profit that was not authorized under the contract.

In its response to a draft of our report the Bureau stated that the report did not fully recognize the "potential catastrophic conditions" and the 'imperative nature" of the situation and disagreed with many of the report's conclusions and 6 of our 10 recommendations. Based on the Bureau's response, we made revisions to the report and three recommendations, considered four recommendations resolved and implemented and requested the Bureau to provide a response to the revised recommendations and to reconsider its response to the remaining three recommendations.

If you have any questions concerning this matter, please contact me at (202) 208-5745.

Attachment

United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

MAR 14 1996

Memorandum

To: **Assistant Secretary for Water and Science**

From: **Judy Harrison** Judy Harrison
Acting Assistant Inspector General for Audits

Subject: **Final Audit Report on the Award and Administration of Contract** No. 1425-2-CC-40-12260 With Environmental Chemical Corporation Related to the Summitville Mine Site Cleanup, Bureau of Reclamation (No. 96-I-313)

This report presents the results of our audit of the Bureau of Reclamation's award and administration of the portion of Contract No. 1425-2-CC-40-12260 with Environmental Chemical Corporation pertaining to the cleanup of the Summitville Mine site near South Fork, Colorado. The objective of the audit was to determine whether the Bureau: (1) awarded delivery orders under the contract in accordance with the Federal Acquisition Regulation and (2) adequately managed contract activities and monitored contractor performance.

On July 7, 1992, the Bureau awarded a contract in an amount not to exceed $500,000 to the Corporation under the Small Business Administration's Section 8(a) program for socially and economically disadvantaged contractors. The purpose of the contract was to provide assistance to the Bureau in the cleanup of various hazardous waste sites. The Bureau was not involved in the cleanup of the Summitville Mine site at the time the initial contract was awarded to the Corporation. In December 1992, the Environmental Protection Agency selected the Bureau to perform the cleanup of the site because the Bureau already had a firm under contract, the Corporation, that the Agency believed could provide the necessary services. The Agency also believed that the Bureau had the necessary contract management resources to administer the project. Subsequently, the Bureau and the Small Business Administration executed nine delivery orders with the Corporation for work on this project, under which the Corporation reported $59 million of expenditures through June 30, 1995.

We concluded that the Bureau did not ensure that costs to the Government resulting from the award of delivery orders under the contract were fair and reasonable. This occurred because the Bureau did not: (1) adequately evaluate the Corporation's proposed costs; (2) evaluate the efficiency and effectiveness of the Corporation's purchasing system; and (3) consider alternative contractors for portions of the cleanup effort. As a result, the amount billed by the Corporation for the period ending December 31, 1994, which was based on negotiated contract rates, exceeded

actual costs by $5.3 million. This amount was in addition to profit negotiated into contract prices for labor, overhead, and general and administrative expenses. We believe that, if the Bureau had performed more thorough analyses of the Corporation's proposed costs and of the Corporation's purchasing system, these excess costs could have been avoided. Further, we believe that, because the delivery orders for the Summitville project were beyond the scope of the initial contract award, the Bureau should have performed further analyses of the qualifications of the Corporation and the method of procurement. For example, the fact that the Corporation subcontracted most of the production work for three delivery orders, totaling $12.5 million, suggests that the Bureau may have had the opportunity to reduce costs by contracting directly with the subcontractors, thereby avoiding the Corporation's overhead and profit on these orders.

Regarding contract administration, we found that the Bureau did not establish formal written inspection procedures or document the Corporation's performance to ensure that hours, equipment, and materials billed were accurate and reasonable. Also, the Bureau, on four occasions, incurred costs on the Summitville cleanup project in excess of funds that were authorized. Finally, the Bureau paid a fee to the Corporation that may represent an unallowable interest payment or additional profit that was not authorized under the contract.

We made 10 recommendations to address weaknesses in the award of the delivery orders and in the administration of contract activities.

On September 20, 1995, we discussed a preliminary draft of this report with officials from the Bureau's Upper Colorado Region, who disagreed with the preliminary draft findings. Regional officials stated that the deficiencies we reported occurred because the Bureau had not adequately documented decisions and actions. Subsequently, we provided the Bureau with revised preliminary drafts of the report and obtained additional comments, which were considered and incorporated into the draft report as appropriate.

In the November 30, 1995, response to the draft report from the Acting Commissioner, Bureau of Reclamation (Appendix 4), the Bureau indicated concurrence with Recommendations A. 1, A.2, A.6, and C.2, which we considered resolved and implemented. However, the Bureau did not concur with Recommendations A.3, A.4, A.5, B. 1, C. 1, and C.3. Based on the response, we revised Recommendations A.4, A.5, and C.3 and requested that the Bureau provide a response to the revised recommendations and reconsider its response to the remaining three recommendations, which are unresolved (see Appendix 6).

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by May 13, 1996. The response should provide the information requested in Appendix 6.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

cc: Commissioner, Bureau of Reclamation

CONTENTS

Page

INTRODUCTION 1

BACKGROUND 1
OBJECTIVE AND SCOPE 2
PRIOR AUDIT COVERAGE 3

FINDINGS AND RECOMMENDATIONS 4

A. DELIVERY ORDERS 4
B. CONTRACT MONITORING 17
C. CONTRACT FINANCING 20

OTHER MATTERS 25

APPENDICES

1. SUMMARY OF INTERAGENCY AGREEMENTS USED TO FUND THE SUMMITVILLE MINE SITE CLEANUP 26
2. DELIVERY ORDERS ISSUED BY THE BUREAU OF RECLAMATION TO ENVIRONMENTAL CHEMICAL CORPORATION THROUGH JUNE 30, 1995 27
3. UNAUTHORIZED EXPENDITURES BY THE BUREAU OF RECLAMATION 28
4. BUREAU OF RECLAMATION RESPONSE 29
5. ENVIRONMENTAL PROTECTION AGENCY RESPONSE 38
6. STATUS OF AUDIT REPORT RECOMMENDATIONS 40

INTRODUCTION

BACKGROUND

In 1986, Summitville Consolidated Mining Company, Inc., started open-pit mining at the Summitville Mine near South Fork, Colorado. The Mine was a large tonnage, open-pit heap leach[1] gold mine covering about 1,400 acres. A cyanide heap leaching process was used to recover gold and silver. In this process, a solution of sodium cyanide is used to leach gold from the ore when sprinkled on, and percolated down through, the heaped ore. The cyanide solution penetrates the ore heap, leaching out gold and silver, as well as copper, zinc, cadmium, manganese, and other heavy metals.

The Mining Company filed for bankruptcy in December 1992. Because the Mining Company's bond with the State of Colorado was not sufficient to pay for the cleanup of the Summitville site and because the State was not capable of responding to the emergency situation, the State requested assistance from the Environmental Protection Agency (the Agency). In a 1993 briefing document, the Agency said that this assistance would help "prevent catastrophic release of hazardous substances to the environment causing serious environmental damage"; that is, the groundwater could be contaminated by toxic pollutants such as cyanide and heavy metals.

On December 16, 1992, the Agency took control of the site to provide removal and remediation action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499). The next day, the Agency entered into the first of five interagency agreements (Appendix 1) with the Bureau of Reclamation to clean up the site. The agreements describe specific tasks to be performed at the site and identify the available funding. In June 1993, the Agency estimated the total cost of the cleanup at $120 million. As of September 1995, the Agency had authorized over $96 million for the project under the five interagency agreements for removal action (time-critical emergency response), site remediation, water treatment, biotreatment of the heap leach pad. and remedial action for the waste pile at the Cropsy site.[2]

---

[1]In a typical heap leaching operation, low-grade ore is extracted from a large open-pit mine and placed in a large pile, or heap.

[2]The waste pile at the Cropsy site was composed of approximately 6.5 million tons of low grade ore, overburden, and waste rock excavated from the main Mine pit during operations. It covered approximately 39 acres and was piled as high as 150 feet from the bottom of the old Cropsy Creek drainage bed in which it was placed.

According to Agency officials, the Agency selected the Bureau for this project because it believed that the Bureau was in a position to react timely to the emergency. Specifically, the Agency was aware that the Bureau already had a firm, Environmental Chemical Corporation (the Corporation), under contract, and the Agency believed that the Corporation could provide the necessary services. Also, the Agency believed that the Bureau had the necessary contract management resources to administer the project. The Agency's oversight of the Bureau's participation in this project is the subject of a separate review by the Agency's Office of Inspector General.

On July 7, 1992, the Bureau had awarded an indefinite delivery, indefinite quantity[3] contract (No. 1425-2-CC-40-12260) in an amount not to exceed $500,000 for the Corporation to provide: (1) hazardous waste site assessments; (2) remedial investigations and feasibility studies; (3) implementation of remediation plans; and (4) assistance to the Bureau in the cleanup of hazardous waste sites on Federal, Department of the Interior, or Bureau land. The contract was awarded under the Small Business Administration's Section 8(a) program for socially and economically disadvantaged contractors. The Bureau was not involved with cleanup of the Summitville Mine site at the time the initial contract was awarded to the Corporation. The Bureau and the Small Business Administration subsequently modified the contract to raise the ceiling through the issuance of delivery orders and/or contract modifications for work at the Summitville Mine and for other work not related to the Summitville project.

As of September 14, 1995, the Bureau had issued 26 delivery orders under the contract for about $72 million (Appendix 2). Nine orders for $69 million were for the Summitville cleanup, and expenditures reported under these orders through June 30, 1995, were approximately $59 million. Seventeen orders for $2.6 million were for work not related to the Summitville project.

OBJECTIVE AND SCOPE

The audit objective was to determine whether the Bureau: (1) awarded delivery orders under the contract in accordance with the Federal Acquisition Regulation and (2) adequately managed contract activities and monitored contractor performance. We performed a separate audit of the amounts billed to the Bureau by the

---

[3]According to the Code of Federal Regulations (48 CFR 16.504(a)), "An indefinite quantity contract provides for an indefinite quantity, within stated limits, of specific supplies or services to be provided during a fixed period, with deliveries to be scheduled by placing orders with the contractor." The Code (48 CFR 16.504(b)) further states, "Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself." The Code (48 CFR 16.506(d)(3)) also states that orders placed under indefinite delivery contracts are to contain the item number and description, quantity, and unit price.

Corporation under Contract No. 1425-2-CC-40-12260. The results of that audit were issued in a separate report (No. 96-E-48) on October 13, 1995. Our current audit focused on delivery orders awarded to the Corporation from December 1992 through July 1995.

Our audit included site visits to: (1) the Bureau's contracting office in Salt Lake City, Utah, and the office of the Bureau Contracting Officer's technical representative in Provo, Utah; (2) the Corporation's corporate headquarters in Burlingame, California, and project office in Del Norte, Colorado; and (3) the Summitville Mine site.

This audit was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. We did not evaluate the Bureau's overall system of internal controls because our review was limited to the award and administration of one contract. However, the weaknesses related to this transaction are discussed in the Findings and Recommendations section of this report. The recommendations, if implemented, should improve internal controls on this project.

PRIOR AUDIT COVERAGE

Neither the General Accounting Office, the Office of Inspector General, nor the Defense Contract Audit Agency (the cognizant audit agency for Environmental Chemical Corporation) has issued any audit reports on the Bureau of Reclamation's administration of the contract for the Summitville cleanup. However, the Defense Contract Audit Agency issued, on March 9, 1992, the audit report titled "Report on Review of Proposal Under Solicitation No. DACA87-92-R-0020, Environmental Chemical Corporation, Burlingame, California" (No. 4281-92121000006) and issued, on September 1, 1992, the audit report titled "Report on Audit of Proposal for Initial Pricing Under Solicitation No. DACA05-92-R-O092, Environmental Chemical Corporation (ECC), Environmental Division, Burlingame, California" (No. 4281-92A21OOOO28). Both reports discussed costs proposed by the Corporation for U.S. Department of Defense contracts.

FINDINGS AND RECOMMENDATIONS

A. DELIVERY ORDERS

The Bureau of Reclamation did not ensure that costs to the Government resulting from the award of delivery orders under the indefinite delivery, indefinite quantity contract to the Corporation were fair and reasonable. This occurred because the Bureau did not: (1) adequately evaluate the Corporation's proposed costs for personnel, prices for equipment, and indirect costs; (2) evaluate the efficiency and effectiveness of the Corporation's purchasing system; and (3) consider alternative contractors for portions of the cleanup effort. As a result, the amount billed by the Corporation for the period ending December 31, 1994, which was based on negotiated contract rates, exceeded actual costs by $5.3 million. This amount was in addition to profit negotiated into contract prices for labor, overhead, and general and administrative expenses. We believe that, if the Bureau had performed more thorough analyses of the Corporation's proposed costs and of the Corporation's purchasing system, these excess costs could have been avoided. Further, we believe that subcontracting by the Corporation of most of the production work for three delivery orders, totaling $12.5 million, indicates that the Bureau may have had the opportunity to further reduce costs by contracting directly with the subcontractors, thereby avoiding the Corporation's overhead and profit on these orders.

Cost and Price Analyses

The Bureau's analyses of the Corporation's overall proposed contract prices and individual cost elements were not sufficiently supported or based on current information. The Code of Federal Regulations (48 CFR 15.805-1) states:

> When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

The Code (48 CFR 15.805-5) also states that when cost or pricing data are required, the contracting officer "shall request a field pricing report (which may include an audit . . .) before negotiating any contract. . . in excess of $500,000, . . . unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price." A July 13, 1993, memorandum signed by the Bureau's Contracting Officer stated that a formal audit by the Office of Inspector General would not be obtained, since adequate information was already

available to establish the reasonableness of the amount of compensation for the work to be performed by the contractor.

The Contracting Officer said that the Bureau had performed an evaluation of the proposed rates for personnel and equipment. However, there was no documentation to substantiate the Bureau's evaluation. In that regard, our separate audit (No. 96-E-48) of amounts billed by the Corporation from December 4, 1992, through December 31, 1994, disclosed that the Corporation's billings for direct costs, which were based on negotiated contract rates, exceeded actual direct costs by $1.2 million,

The Contracting Officer relied on incomplete and outdated information to negotiate indirect cost rates for the entire contract period. The data relied upon were contained in Defense Contract Audit Agency audit reports issued on March 9 and September 1, 1992. The audits covered indirect cost rates proposed in U.S. Department of Defense contracts and were based on the Corporation's costs for 1991. The audits did not cover the overhead rate proposed for the Summitville project. Moreover, the Defense Contract Audit Agency reports stated that "rates were based on 1991 costs and did not reflect forecasted conditions for 1992 and future years." Accordingly, the Agency reports did not recommend that the audited indirect cost rates be used for 1992 and beyond. Moreover, the negotiated rates were based on a much smaller business base than what the Corporation actually experienced. Specifically, the Corporation's reported annual revenues increased significantly from 1991 through 1994, which we believe should have resulted in a commensurate reduction in the Corporation's indirect cost rates because the indirect costs would have been spread over a much larger revenue base. Based on our separate audit (No. 96-E-48) of amounts billed by the Corporation for the period ending December 31, 1994, we found that the Corporation's billings for indirect costs, based on the negotiated rates, exceeded actual indirect costs by $4.1 million.

Purchasing System

The Code of Federal Regulations (48 CFR 44.301 and 44.302) requires that the contracting agency conduct a complete review of the contractor's purchasing system to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review is required for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million during the next 12 months. The Code (48 CFR 44.303) further states that "special attention shall be given," among other things, to the degree of price competition obtained and the methods of obtaining accurate, complete, and current cost or pricing data. However, according to a Bureau contract specialist, the Bureau did not perform or request an evaluation of the Corporation's purchasing system for the Summitville project because it did not anticipate the extent of the Corporation's involvement. We determined that the Corporation's competitive purchasing procedures were deficient

in that they consisted of obtaining price quotations over the telephone and checking catalogs for published prices but did not contain a dollar threshold for requiring formal advertising, formal requests for price quotes, or written proposals from suppliers.

We performed a limited review of purchase orders placed by the Corporation to determine whether it obtained Bureau approval for all purchases (Bureau and Corporation officials said that they had agreed that all purchases would be approved in advance by the Bureau) and whether the Corporation was using competitive purchasing procedures. We found that the Corporation did not always: (1) obtain proapproval from the Bureau for all purchases; (2) obtain competitive quotes; (3) update price quotes; or (4) justify sole source purchases. We reviewed 31 purchase orders, valued at approximately $466,000, for the billing cycle of October 15 through 28, 1994, and noted a total of 22 deficiencies in 20 of the orders, valued at approximately $257,000. Specifically, price quotes were not current (4 to 11 months old) on six orders; Bureau proapproval was not obtained for seven orders; there was no justification for the sole-source purchase of one order; and competition was inadequate (less than three price quotations) on eight orders. For example, the Corporation obtained only one quote for the rental of dump trucks. Based on our analysis, we concluded that the Corporation's purchasing procedures and practices did not ensure that prices paid were the most economical.

Contractor Selection

Regarding the selection of the Corporation, the Bureau provided no documentation to indicate that it or the Environmental Protection Agency had considered using sources other than the Corporation for the nine delivery orders issued to the Corporation for the Summitville cleanup work. The Code (48 CFR 9.1) requires a determination of a prospective contractor's responsibility. That is, an agency should determine whether the organization possesses the necessary resources (or the ability to obtain them), administrative organization, and record of performance to provide the desired services. Also, the Code (48 CFR 19.6) contains a similar requirement for contracts awarded under the Small Business Administration's Section 8(a) program. The Federal Acquisition Regulation requires these determinations to be made before the award of the contract. As such, these determinations would not have addressed the ability of the Corporation to complete most of the delivery orders for the Summitville project because the work was beyond the scope of the initial contract. We believe that because the delivery orders for Summitville were beyond the scope of the initial contract award, the Bureau should have performed further analyses of the qualifications of the Corporation and the method of procurement. For example, three of the nine orders were for nonwater treatment work that the Corporation apparently did not have the resources to perform. As a result, the Corporation subcontracted for most of the work. Although subcontracting is an acceptable means of obtaining services, it raises the question, particularly in the

absence of any documentation, of whether sufficient consideration is being given by the Bureau to the possibility of contracting directly with other companies to perform work on the Summitville project.

The three delivery orders dealing with nonwater treatment activities totaled $12.5 million as follows: No. 12, $1,948,242 for filling a mine opening; No. 13, $8,554,364 for removing waste ore and overburden; and No. 25, $2 million for providing biotreatment[4] of the heap leach pad. The type of work done under these three orders was significantly different from the emergency water treatment work that the Corporation had performed previously at the site. However, there was no documentation to indicate that the Bureau had performed an evaluation to assess the Corporation's ability to perform the work required under these orders.

A Bureau contract specialist stated that awarding a separate contract for the work under these delivery orders would extend the procurement cycle because he believed that the Corporation could subcontract for the work more quickly than the Bureau. However, if timing was critical in the award of these orders--that is, if the need for services was of such "unusual and compelling urgency" that the Government would be injured unless allowed to limit the sources--the Bureau would have been permitted under the Code (48 CFR 6.302-2) to limit sources and negotiate with any qualified contractor that could satisfy the Government's requirements. Moreover, we found no documentation to support the statement that awarding the delivery orders to the Corporation shortened the procurement cycle. In fact, the time required by the Bureau to award other contracts for similar work at the Summitville site was only 2 months, which was in compliance with established milestones for the project.

The Corporation's use of subcontractors for these three delivery orders resulted in an additional layer of direct costs, overhead, general and administrative expenses, and profit that may have increased costs unnecessarily. The $10.5 million for Delivery Orders 12 and 13 was for production work and for indirect costs and profit. The Corporation subcontracted most of the production work under these two delivery orders. The Corporation said that it also planned to subcontract most of the production work under Delivery Order 25.

The three delivery orders for which subcontracting was used are detailed as follows:

- The Bureau issued Delivery Order 12 to the Corporation on October 1, 1993, for plugging the Reynolds adit.[5] Subsequently, the Corporation awarded a

---

[4]Biotreatment is a process whereby organisms are inserted into the contaminated waste piles. The organisms then ingest the contaminants, thus eradicating the contaminants from the waste pile.

[5]An adit is a nearly horizontal opening by which a mine is entered, drained, or ventilated.

subcontract to Intermountain Mine Services for the production work. The Bureau issued the delivery order to the Corporation knowing that the Corporation had designated Intermountain Mine Services as the subcontractor on July 7, 1993. Total expenditures under Delivery Order 12 were $1,948,242, most of which was for subcontractor costs.

- The Bureau issued Delivery Order 13 to the Corporation on October 4, 1993, for waste removal at the Cropsy site. Total expenditures under this delivery order were $8,554,364. The Corporation did not own the equipment necessary to perform the production work; consequently, the Corporation subcontracted most of the production work.

We compared the Corporation's production costs on Delivery Order 13 for waste removal at the Cropsy site (Phase I) with those of another contractor (Rust Remedial Services) that performed similar work at the site (Phase II). Our comparison showed that the Corporation's unit costs were substantially higher than the costs that Rust Remedial Services charged for similar work. Had Rust Remedial Services completed work under Phase I at the same rate that it used on Phase II, the total costs to the Government would have been several million dollars less than the amount paid to the Corporation.

- The Bureau issued Delivery Order 25 on June 9, 1995, for an initial amount of $2 million (available funding for contractors is $4.7 million) for biotreatment of the heap leach pad. The Corporation's conceptual work plan verified that essentially all of the tasks under the delivery order would be subcontracted. Therefore, the Bureau knew that the Corporation would subcontract for the production work. Thus the Corporation essentially has been acting as a contract administrator for the Bureau for this delivery order and will continue in this capacity until July 1996.

Recommendations

We recommend that the Commissioner, Bureau of Reclamation:

1. Request an audit of the Corporation's current direct costs and indirect cost rates and continue to analyze and consider the need for further auditing for future work.

2. Ensure that future contract rates negotiated with the Corporation, including proposed indirect cost rates for 1995 and future years, are made provisional pending the results of an audit of the rates cited in Recommendation 1.

3. Conduct a review of the Corporation's purchasing system to determine the improvements needed to increase competition.

4. Prepare an analysis of the unfinished work and the conditions of the Summitville Mine site to determine an efficient and effective acquisition strategy for completion of the project.

5. Determine, based on the analyses cited in Recommendation 4, what, if any, portion of the work the Bureau, the Corporation, and/or another contractor should perform. This determination may require the Bureau to close out current delivery orders with the Corporation and employ competitive bidding procedures.

6. Use competitive contracting procedures for the balance of work at the Summitville site unless sole source procurements are justified.

Bureau of Reclamation Response and Office of Inspector General Reply

In its November 30, 1995, response to the draft report (Appendix 4), the Bureau concurred with Recommendations 1, 2, and 6 but did not concur with Recommendations 3, 4, and 5.[6] In "Additional Comments" attached to its response, the Bureau also took issue with other aspects of the draft report. In a separate response, the Agency supported these and all other positions taken by the Bureau (Appendix 5). Based on the Bureau's response, we consider Recommendations 1, 2, and 6 resolved and implemented and Recommendations 3, 4, and 5 unresolved (Appendix 6). Those aspects of the draft report with which the Bureau expressed disagreement are discussed below.

Introduction

Bureau Response. At the beginning of its response, the Bureau acknowledged that "other contracting methods and procedures could have been utilized on the Summitville Project," but justified its actions based on "the limited information available and the conditions existing at the time, as well as the long-range plan for remediation at the site." The Bureau added that the audit report "does not fully recognize the potential catastrophic conditions and the imperative nature of the situation ."

Office of Inspector General Reply. We do not question the catastrophic conditions, the emergency nature of the situation, and the corresponding need to act quickly at the outset. We assume, however, that at some point short of the 2 1/2 - 3 year mark--which is when the audit took place--the emergency situation had been abated. Indeed, the audit report issued by the Agency's Office of Inspector General on January 22, 1996 (No. ElSFG5-08-0032-6400019), noted that in September 1993, lead responsibility for the Summitville cleanup was transferred at the Agency from

[6] Based on the Bureau's comments, Recommendations 4 and 5 have been revised to clarify our position.

Region 8's Emergency Response Branch to its Superfund Remedial Branch with a memorandum stating that "[emergency water management operations at the site are now an established 'routine,'" and that the Emergency Response Branch's involvement was for emergency or time-critical remedial actions. We found no indication, however, that the Bureau had taken steps to address the types of deficiencies identified in our report, even after September 1993.

Recommendation 1. Concurrence.

Bureau Response. Although the Bureau concurred with Recommendation 1, it disagreed with our comments regarding the inadequacy of its review of the Corporation's cost and price proposal. Noting that "[t]he actual work performed at Summitville was not envisioned at the time the contract was awarded and it was anticipated that the orders under the contract would be relatively small and intermittent," the Bureau maintained that the analysis of the contractor's proposal was performed, consistent with the Federal Acquisition Regulation, "at a level considered reasonable for the anticipated work."

Office of Inspector General Reply. We recognize that the full magnitude of the project may not have been envisioned by the Bureau at the outset when the initial delivery order (No. 5) for site assessment in the amount of $7,000 was issued on December 8, 1992. However, Delivery Order 6, issued for $95,000 on December 12, 1992, was increased to $4.7 million by March 11, 1993, and subsequently increased to a total of $6.8 million by May 25, 1993. In fact, a Bureau engineer had estimated on December 10, 1992--2 days prior to the issuance of Delivery Order 6--that the costs of the first 3 1/2 months of work under that delivery order would be $4 million. Delivery Order 6 was followed by another delivery order (No. 9), issued for $5,000,000 on May 5, 1993, and subsequently modified 10 times over the next 2 years (in amounts ranging from $1 million to $6 million) to a total of about $40 million. Further, in June 1993, the Agency estimated the total cost of the cleanup at $120 million. Thus, by July 13, 1993, when the Contracting Officer opted not to obtain an Office of Inspector General audit of the contractor's rates, we believe that it should have been apparent that orders under the contract would not in fact be "relatively small and intermittent." In any event, the fact that the project was significantly larger than originally envisioned and the Bureau acknowledged that its analysis of the contractor's cost and price proposal was designed for a contract of a much smaller magnitude demonstrate that further documented analyses should have been performed to determine whether continued use of the Corporation under time-and-materials delivery orders and at initial negotiated rates was the most efficient, effective, and appropriate way to complete the project.

Recommendation 3. Nonconcurrence,

Bureau Response. While agreeing to "discuss the issues of obtaining and maximizing competition with the contractor," the Bureau expressed the view that a review of the Corporation's purchasing system "is neither prudent nor required at this time." The Bureau maintained that a system review: (1) "does not assure certification, nor does it assure that a contractor will continue to use acceptable procurement methods"; and (2) is generally not performed for a specific contract. According to the Bureau, these factors, together with the "declining" role of the Corporation at Summitville, militate against conducting such a review in light of the costs and resources that would be necessary to do so.

Office of Inspector General Reply. The Bureau's objection to conducting a system review is not supported by the rationale upon which it relies. First, the fact that a system review would not guarantee a perfect system or one that would be invulnerable to a contractor intent on breaking rules and regulations is hardly reason to disregard evaluations and analyses designed to promote efficient and effective operations. A mere "discussion" with the contractor--particularly here, where deficiencies have been identified in the Corporation's purchasing system that remain undisputed by the Bureau--is insufficient to protect the Government's interests. By contrast, the regulations that govern the recommended system review include procedures to help ensure the correction of weaknesses in the system, as well as sanctions for noncompliance with requirements (48 CFR 44.3).

Second, while the Federal Acquisition Regulation notes that a system review is not "generally" performed for a specific contract, we suggest that the contract with the Corporation was not a routine contract. As of September 14, 1995, the Bureau had issued nine separate delivery orders under the contract for work related to the Summitville cleanup, each for distinct tasks, for a cumulative total of $69 million. The tasks included work performed by the Corporation, as well as work performed by subcontractors, and represented only a little more than half of the estimated $120 million value of the entire project. In addition, the delivery orders were modified on numerous occasions to increase the contractual ceiling by amounts as great as $6 million in one modification. Where, as here, delivery orders are "time-and-materials" orders, there is little incentive for a contractor to control costs because the contractor realizes increased profits as costs increase. According to the **Code** of Federal Regulations (48 CFR 16.601(b)(l)), in such cases, "Appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used." These factors, together with the previously referenced deficiencies in the Corporation's purchasing system, counsel against reliance on the cited provision of the Federal Acquisition Regulation to avoid conducting a purchasing system review.

Finally, the Bureau cited the "declining" role of the Corporation at Summitville, and the cost and resources necessary to conduct a system review as reasons justifying its opposition to review. However, the Bureau did not provide any supporting cost or work progress information that would permit the type of cost-benefit analysis that it suggested. Indeed, while the Corporation's role in the Summitville project maybe declining in relative terms, the information available to us as of September 1995 indicated that, 2 1/2 to 3 years after issuance of the first delivery order, approximately $47 million of the estimated $120 million of work on the project remained to be completed. Thus, without more information, there is no basis upon which one could reasonably conclude that the undisclosed cost of conducting a system review, to which the Bureau refers, would be unwarranted when considered against the benefits of such a review.

In view of the foregoing, we request that the Bureau reconsider its response to this recommendation or suggest a more reasonable alternative than the one it proposes that would provide greater assurance that the Corporation follows proper purchasing procedures.

Recommendation 4. Nonconcurrence.

Bureau Response. Noting that the draft audit report erroneously cited 48 CFR 15.804-4--which requires a technical analysis of a contractor's proposal--as support for requiring a technical analysis of the contractor and its ability to perform, the Bureau maintained that it was unaware of a regulatory requirement to formally perform and document the type of analysis recommended. Instead, the Bureau cited 48 CFR 9 for the regulations that govern review of a contractor's ability to perform, noting that a contractor's resources to perform work include the ability to subcontract, as well as to lease and rent equipment when necessary.

Further, while the Bureau agreed that formal documentation of its decisions and rationale could be improved, and stated that this aspect of the Summitville operation was being improved, the Bureau did not agree that the Corporation's involvement in biotreatment work was not analyzed. According to the Bureau, "A formal documented analysis is not in the contract file, but prior to taking action, Reclamation and the Agency fully discussed the requirements of the work and options before deciding on a final course of action." The Bureau did not believe that "recreating those discussions and considerations would be a meaningful and valuable use of resources. "

Office of Inspector General Reply. The Bureau correctly noted that the draft report erroneously cited 48 CFR 15, rather than 48 CFR 9, in connection with the recommended assessment of the contractor's ability to perform the work. Nonetheless, this technical error should not overshadow the substance of the

problem discussed in the report regarding the absence of documented analyses or the importance of the recommendation.

The essence of our concern is that the Bureau provided no documentation from which one could conclude that it or the Agency had considered using sources other than the Corporation for the nine delivery orders issued to the Corporation for the Summitville project. The issue is one of ensuring that the Government's interests are protected to the greatest extent possible, from the standpoint of both the contractor's ability to perform the work as well as the cost effectiveness of the project. By analyzing and comparing what the Corporation has to offer with that of other contractors, achievement of this goal is fostered.

As the Bureau acknowledged in attempting to defend what we found to be a deficient analysis of the contractor's proposal, "The actual work performed at Summitville was not envisioned at the time the contract was awarded and it was anticipated that the orders under the contract would be relatively small and intermittent" (see Bureau's Additional Comments). Indeed, the contract between the Bureau and the Corporation to which the Summitville project was appended was initially slated as not to exceed $500,000. The Summitville cleanup, however, is estimated at $120 million. Expenditures under individual delivery orders ranged from approximately $6,000 to approximately $40 million. In view of the vast difference between the tasks originally anticipated and what ultimately resulted, and because some of the work under the delivery orders was beyond the scope of the initial contract, we believe that the Bureau should have performed further analyses to determine whether a change in acquisition strategy was warranted.

The Bureau and the Agency may well have "fully discussed the requirements of the work and options" before deciding that the delivery order for the biotreatment work should be given to the Corporation. In the absence of any documentation, however, we could not evaluate the sufficiency of any such review. As to documentation, the Code of Federal Regulations (48 CFR 4.803) provides examples of records normally contained in contract files, including source selection documentation and the contracting officer's determination of the contractor's responsibility. Further, Part 9.105-2(b) states that "documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable Certificate of Competency, must be included in the contract file." The Bureau's contract files did not contain any documentation to suggest that the Bureau had performed an assessment of the Corporation's ability to perform the tasks encompassed by the more expansive Summitville project.

Finally, we agree that a contractor may legitimately subcontract to obtain resources necessary to perform a job consistent with a finding of responsibility. We also do not question whether the Corporation competitively awarded the major subcontracts cited in the report. Instead, our reference to the extent of subcontracting is simply

to suggest that there may have been opportunities for the Bureau to award some of the work competitively at the Summitville site.

We have revised our report and recommendation to correct the technical error cited by the Bureau and to clarify our position. The Bureau is requested to respond to the revised recommendation.

Recommendation 5. Nonconcurrence.

Bureau Response. The Bureau stated that the major reasons for using the Corporation for work that "ultimately required considerable subcontracting" were to "coordinate interfacing activities at Summitville, accommodate funding, and minimize the procurement cycles." The Bureau further stated that its actions "helped keep the project on schedule, thus minimizing overall monetary and environmental impacts." According to the Bureau, its work load has increased and its construction contracting staff in the Upper Colorado Region has decreased by more than 30 percent as a result of Federal downsizing of personnel.

Regarding the expedited procurement methods, the Bureau said in its "Additional Comments" that Title 48, Part 6.302.2, of the Code, which the report cited as providing authority for using expedited procurement methods, does not allow sole source procurements or eliminate the need to take time to prepare and review proposals and obtain higher level justifications and approvals. The Bureau further stated that the report's comparison of the work performed by Rust Remedial Services with the work performed by the Corporation for waste removal at the Cropsy site was not relevant because of differences in requirements.

Office of Inspector General Reply. The Bureau indicated that one of the main reasons for using the Corporation for the ongoing work at Summitville was to "coordinate interfacing activities." However, the Agency stated that it selected the Bureau for the Summitville project in part because of the Bureau's contract management resources. It appears from the Bureau's response that it has contracted some of the responsibility for administering the project to the Corporation, especially in view of the recent reductions to the Region's contracting staff. We believe that if, in fact, the Corporation is performing increased work related to contract administration, the Bureau should use the results of the analysis in Recommendation 4 to also assess its administrative capabilities and to determine the best way to obtain all necessary services. Therefore, we have revised this recommendation to address these concerns, and the Bureau is requested to respond to the revised recommendation.

As to expedited procurement methods and the Rust Remedial Services comparison, we used the particular Code citation and discussed the similar work performed by Rust Remedial because we believe they demonstrated that there were means and

opportunities for the Bureau to seek competition for some of the work performed at the Summitville site. Regarding the Bureau's statement that our comparison of the work performed by the Corporation with the work of Rust Remedial for waste removal at the Cropsy site did not consider "numerous factors that make the tasks incomparable," our analysis did not show differences significant enough to negatively impact the results of our comparison. As the Bureau stated in its response, both tasks were for the removal of material from the same general location. In that regard, in response to our specific inquiry, the Agency's Remedial Project Manager for the Summitville project told us that the work done by Rust Remedial on its competitively awarded contract was basically the same as the work performed at the site by the Corporation. The Bureau also stated that we did not consider the effects of differing climatic conditions in our comparison. During our analysis of the two tasks, we could not find any documentation to support a cost impact attributable to climatic conditions. Nonetheless, we believe that climatic conditions would have some impact on the tasks, and we factored out snow removal in our analysis to accommodate some of the climatic differences. The Bureau also said that our report implies that "the Corporation's costs would have been less had [the Corporation] owned the necessary equipment yet compares the Corporation's costs to those of Rust Remedial Services who rented the majority, if not all, of [its] heavy construction equipment." However, the Bureau's statement has no bearing on our analysis because we compared overall prices, which included all appropriate costs.

Additional Comments

Background

Bureau Response. Our report states that the initial contract between the Bureau and the Corporation, which was awarded on July 7, 1992, contained a limit "not to exceed $500,000." The Bureau responded that it could not find such a statement in the contract, but that the $500,000 figure appeared only in the Price Negotiation Memorandum as an "estimated" contract amount. Based on the contention that $500,000 represented only an estimate of the orders for the first year of the contract, the Bureau recommended that we delete our statement from the report.

Office of Inspector General Reply. On page 2 of the document entitled "Solicitation, Offer, and Award," which was signed by the Bureau's Contracting Officer on July 7, 1992, and by the Corporation on June 16, 1992, block 22, entitled "Amount," states, "NTE [Not to Exceed] $500,000."

Delivery Orders

Bureau Response. Our draft report stated that the overrecovery of contract costs was "in addition to profit which was based on [a percentage] of the total direct costs." Noting that the Corporation's profit varies depending on the circumstances,

the Bureau suggested that the statement be revised to read, “This amount was in addition to any profit paid directly under the delivery orders.”

Office of Inspector General Reply. The contract provides the percentage of the rate of profit, and the contract’s supporting schedule of line item costs describes how profit is applied to the basic rate and to the associated indirect costs. Accordingly, in order to be more precise, we have revised page 4 of our report as follows:

> This amount was in addition to profit negotiated into contract prices for labor, overhead, and general and administrative expenses.

Cost and Price Analyses

Bureau Response. Although concurring with Recommendation 2, the Bureau noted that the overrecovery of indirect costs cited in our report maybe “considerably overstated’ because a considerable portion of the $4.1 million classified as excess represents the Corporation’s cost for one item that may be approved by the cognizant Department of Defense contracting officer, in accordance with the Federal Acquisition Regulation. The Bureau stated that the Federal Acquisition Regulation-required Department of Defense approval process is ongoing. The Bureau also suggested that the only basis for our disallowance of the cost of the one item was “the lack of current approval.”

Office of Inspector General Reply. The Defense Logistics Agency is the cognizant Department of Defense entity responsible for approving the item cited above for the Corporation. By letter dated July 11, 1995, to the Corporation, the Defense Logistics Agency provided the monetary range for the item cited above, The letter further stated that the amount the Corporation proposed for this item “well exceeds” any quotation provided to the Corporation, and that it is “clearly unreasonable and not in the government’s best interests. ” In addition, the letter stated that any approval of the item presented would be prospective in nature, and thus any costs incurred by the Corporation with respect to this item prior to approval would be disallowed.

In response to our inquiry on January 25, 1996, the Administrative Contracting Officer, Defense Logistics Agency, advised us that the Corporation had not submitted any further information to substantiate its initial proposal for the item cited above, nor had it sought to reverse the Defense Logistics Agency’s decision. Accordingly, the position of the Defense Logistics Agency has not changed since July 11, 1995. The Administrative Contracting Officer also reiterated that any future submission by the Corporation would not result in a retroactive approval.

Based on these statements and our separate audit of the Corporation’s costs, we believe that the amount we cited as overrecovered indirect costs is appropriate.

B. CONTRACT MONITORING

The Bureau did not establish formal written inspection procedures or document the Corporation's performance on cleanup of the Summitville Mine to ensure the accuracy of hours charged for personnel and equipment usage and the accuracy of reported quantities of chemicals consumed for cleanup operations. The Bureau used an indefinite delivery, indefinite quantity contract with time-and-materials[7] delivery orders for the cleanup effort. Under this type of contracting arrangement, the Corporation was paid at fixed hourly rates for certain work performed and for the costs of supplies used. However, although the interagency agreements required daily on-site inspections of the contractor's work, the Bureau's inspectors were not on-site daily. In addition, the Bureau did not provide its inspectors with written inspection procedures to evaluate contractor performance. As a result, the Bureau did not ensure that all hours and quantities reported by the Corporation were accurate and reasonable.

Time-and-materials delivery orders provide little incentive for contractors to control costs because each unit of cost generates a corresponding unit of profit for a contractor. Since the Bureau used time-and-materials delivery orders for the cleanup effort at the Summitville Mine site, the Bureau was required by the Code (48 CFR 16.601(b)(l)) to provide appropriate oversight of the Corporation's performance "to give reasonable assurance that efficient methods and effective cost controls [were] used." However, we found that the inspectors' monitoring activities were informal and did not include systematic and regular verifications of personnel, equipment usage, and materials consumed. For example, for the billing period of August 18 through September 5, 1993, the Corporation's daily inspection reports did not indicate that inspectors had verified personnel, equipment usage, or the amount of chemicals consumed. Further, the Bureau's inspectors may have been discouraged from identifying and reporting deficiencies in the Corporation's activities to the Bureau Contracting Officer's technical representative for subsequent corrective action. In that regard, the chief inspector told us that he was instructed by his supervisor not to tell the Corporation what resources were required or to "interfere" with its decisions on these matters. In addition, based on interviews with Bureau inspectors, we determined that, while Corporation personnel were on site two shifts a day, Bureau inspectors were not always on-site daily and usually were on-site for only one shift when they were present.

[7] According to the Code of Federal Regulations (48 CFR 16.601(a)), "A time-and-materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost."

Recommendation

We recommend that the Commissioner, Bureau of Reclamation, implement site-specific inspection procedures to provide reasonable assurance that contractors use efficient methods and effective cost controls. Procedures should include verifications of number of personnel, equipment usage, and materials consumed during production; measurements of resources used against contract performance criteria; and provisions to correct deficiencies when inspectors encounter inefficient uses of contractor personnel, equipment, or materials.

Bureau of Reclamation Response and Office of Inspector General Reply

Bureau Response. In its November 30, 1995, response to the draft report (Appendix 4), the Bureau did not concur with our recommendation, stating that its inspection procedures are "consistent with those typically used for the type of work and conditions at the site"; that its inspectors are "experienced and well trained"; that the procedures utilized provide "sufficient verification of resources used"; and that the work is under "regular review and evaluation."

In its "Additional Comments," the Bureau noted that the daily report for water treatment and other unidentified inspection reports provide "a written procedure of items to be checked." The Bureau maintains that "[w]ater treatment facilities typically operate with minimal inspection other than quality control tests on effluent," but that even more vigorous testing is being performed at Summitville to meet Colorado requirements. The Bureau added that compliance with those standards is independently checked downstream by the Technical Assistance Group and the U.S. Geological Survey.

The Bureau further noted that the water quality standards "inherently provide consumption control," because of the detrimental effect that overusage or underusage of chemicals can have on water quality. According to the Bureau, practical considerations such as transportation and lack of alternative markets also serve to prevent the misuse of materials at the site. Finally, the Bureau stated that, because all contractors are required to shuttle to and from the site and must log in and out, there is a "proven method of verifying personnel at the site."

Office of Inspector General Reply. The Bureau's response does not address our concerns, and we therefore request the Bureau to reconsider its position.

The Bureau's reliance on effluent monitoring, which it characterizes as providing "the primary monitoring for the facility," is insufficient because the monitoring procedures described relate primarily to qualitative aspects of the water treatment project. While we do not question the Bureau's efforts in this regard, the testing of effluent does not ensure that efficient methods were used by the Corporation or that effective

controls to promote such methods were in place. The water quality could be perfect while the means used to achieve that quality could be laden with costly inefficiencies.

Regarding written procedures, our review of the daily reports cited by the Bureau concluded that they were essentially a record of observation of ongoing site activities, The reports did not record the measurement by Bureau personnel of resources used by the Corporation to perform these activities or compare them against any preestablished written inspection criteria. Indeed, Bureau inspectors advised us that their inspection procedures did not include physical verifications of personnel, equipment usage, or chemicals consumed for water treatment, and the Bureau could provide no documentation to support such inspections. Since the inspectors did not have written procedures to help them perform their inspections, there was minimal assurance that the Corporation used efficient methods or effective cost controls.

We also do not have any reasonable assurance of efficiency and effectiveness by virtue of the Bureau's suggestion that the water standards "inherently provide consumption control" or that practical considerations "virtually eliminate the possibility of the materials being used for other purposes or stolen." Such assumptions, which clearly do not encompass the entire spectrum of possible inefficiencies, cannot substitute for actual inspections.

Finally, we do not believe that a log of the time and date of all personnel entering and leaving the site, which is prepared by the Corporation--whose actions are the subject of the Bureau's monitoring responsibilities--provides sufficient assurance to the Government that the Corporation is working efficiently and effectively.

In short, according to the Code of Federal Regulations (48 CFR 16.601(b)(l)):

> A time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

C. CONTRACT FINANCING

Based on our review of the Corporation's invoices and the Bureau's actual monthly charges, we concluded that, on four occasions, the Bureau incurred costs to clean up the Summitville Mine site in excess of funds that were authorized and available under interagency agreements with the Agency. The interagency agreements established the terms and conditions by which the Bureau of Reclamation and the Agency were to conduct business in accomplishing the Summitville Mine cleanup operations. The agreements included funding thresholds within which the Bureau was to operate. However, on four occasions the Bureau, anticipating additional funds from the Agency, authorized the Corporation to continue working on the project after all funds available under the agreements had been expended. The unfunded expenditures could have created an Anti-Deficiency Act violation if the Agency had not provided additional funds to the Bureau.[8]

Regarding funding, the Bureau's Contracting Officer said that the Agency told the Bureau not to interrupt the work and that funds would be made available. Consequently, between March 15 and April 14, 1994, the Corporation continued to work and submit invoices to the Government, even though funds under the Bureau's interagency agreement with the Agency had been depleted. For example, notations on the Corporation's invoices stated, "Invoices held due to lack of funds" and "Held for funding mod." We determined that unfunded expenditures reached a high of $5.2 million on April 14, 1994 (Appendix 3). When the Bureau received funds from the Agency on April 15, 1994, the contract specialist recommended payment of five invoices that had been received during the period when the funds were not available.

In addition, the Bureau paid the Corporation a fixed fee under Delivery Order 13. The Bureau's reasons for paying the fee, as cited in the negotiation memorandum, were: (1) "slowness of the receipt of funding from EPA [Environmental Protection Agency]" and (2) "the contractor was forced to finance a good portion of the work while awaiting funding from EPA." However, the Code of Federal Regulations (48 CFR 32.704 (a)(iv)(B) and (C)) states that "the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached" and that "any work beyond the funding or cost limit will be at the contractor's risk." Furthermore, the Code of Federal Regulations (48 CFR 31.205-20) states that "interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital . . . are unallowable."

---

[8]The Anti-Deficiency Act prohibits government officials from making or authorizing payments for goods or services unless funds have been appropriated and are available to satisfy the expenditures in full (see 31 U.S.C. 1341).

If the fee was payment for other than financing costs, it may have resulted in additional profit for the Corporation. However, the contract prices negotiated in April 1993 specified that the Corporation would not receive profit for work that was subcontracted, and almost all of the work under Delivery Order 13 was subcontracted. In addition, the fixed fee was negotiated after the work under the delivery order was substantially complete. Therefore, based on information we have, we question whether payment of the fixed fee was appropriate because it appears to represent either compensation for financing costs, which is unallowable, or additional profit paid to the Corporation that was not authorized under the contract.

Recommendations

We recommend that the Commissioner, Bureau of Reclamation, direct appropriate staff to:

1. Establish controls to ensure that contracting officers do not allow contractors to continue work after funding for a project is no longer available.

2. Coordinate with the Agency on the amount, availability, and timing of funding to avoid interruptions of work on the project.

3. Obtain a Solicitor's opinion as to whether the payment of the fixed fee was appropriate. If the payment was not appropriate, the amount of the fee should be recovered from the Corporation.

Bureau of Reclamation Response and Office of Inspector General Reply

In the November 30, 1995, response to the draft report (Appendix 4), the Bureau did not concur with Recommendation 1 and indicated compliance with Recommendations 2 and 3. In the draft report, Recommendation 3 did not require a Solicitor's opinion. Based on the Bureau's response, we have revised Recommendation 3 to require such an opinion, Accordingly, we consider Recommendation 2 resolved and implemented and Recommendations 1 and 3 unresolved (Appendix 6).

Recommendation 1. Nonconcurrence.

Bureau Response. The Bureau acknowledged that "there were cash flow problems between EPA [the Environmental Protection Agency] and Reclamation that resulted in a period when there were insufficient funds under the inter-agency agreement to cover the costs being incurred by the contractor," and that "Reclamation's procedures also may have impacted that funding flow." The Bureau also acknowledged that it was cognizant of the "potential problems that could be incurred' by allowing the Corporation to proceed in the absence of adequate funds

in the interagency agreement. However, the Bureau did not concur with our recommendation. The Bureau maintained that funds were available within the Agency but were not transferred because of internal difficulties. The Bureau further maintained that, given the "catastrophic" environmental damage that could have occurred if work was interrupted, the continuation of work was appropriate under the Economy Act and other unidentified laws and regulations.

The Bureau also noted that it has sought to improve its administration of hazardous waste agreements by delegating "authority and responsibility" to the particular Bureau office charged with administering the contract at issue. The Bureau concluded that "it has provided as much control as is reasonable in regard to this matter," and that "no further controls are considered necessary" because the contracting officers and others are knowledgeable about the applicable acquisition procedures and are expected to act in accordance with the applicable laws and "good business judgment."

Finally, the Bureau implied that our recommendation is inconsistent with prior Office of Inspector General audits conducted between 1988 and 1993 of the Bureau's Superfund interagency agreements. In prior audits, the Bureau noted, we recommended that the Bureau obtain amendments from the Agency to cover costs incurred that exceeded the amount authorized in the agreements.

Office of Inspector General Reply. We request the Bureau to reconsider its position. The Economy Act authorizes an agency to order goods or services from another agency if "amounts are available" and "the agency or unit to fill the order is able to provide the ordered goods or services" (31 U.S.C. 1535(a)(l,3)). Furthermore, an order placed or agreement made under the auspices of the Economy Act "obligates an appropriation of the ordering agency or unit," although the amount is deobligated if the agency or unit filling the order has not incurred obligations to provide or make arrangements to provide the requested goods or services (31 U.S.C. 1535(d)). In the circumstances presented here, the Bureau incurred an obligation for additional services by authorizing the Corporation to proceed with work at a time when no authority existed under the interagency agreements which would obligate the Agency to reimburse the Bureau for this additional work. Thus, the Bureau had "obligated" an appropriation at a time when funds were not "available," a situation not authorized by the Economy Act or any other statute or regulation of which we are aware. Had the Agency ultimately not paid the Bureau, the Bureau could have been in violation of the Anti-Deficiency Act.

The possibility of an Anti-Deficiency Act violation cannot be dismissed casually. The Agency's Office of Inspector General report noted:

> "[I]t was a struggle every time" the Region had to obtain additional funding from Headquarters staff, according to the site team leader. For example,

Region 8 staff told us that Headquarters staff considered discontinuing Summitville funding and was continuously reevaluating Summitville's priority. Regional staff told us they did not believe that Headquarters staff had placed a high priority on providing the needed funding for Summitville after the initial emergency response action. Regional staff and Headquarters staff delayed funding even though Headquarters staff were aware of Summitville needs based on the "Summitville Mine Site Project Plan" that included approximate funding for possible site actions.

We do not question the seriousness of the situation at Summitville. Of course, as noted earlier, according to the Agency's Office of Inspector General, the emergency appears to have been abated by September 1993. Moreover, we can find no authority for the Bureau to have authorized and incurred obligations for work at a time when it was unable to pay for such work. That is why we have recommended both that controls be established to ensure against the continuation of work without adequate funding, and that there be better coordination with the Agency of the amount, availability, and timing of funding so as to avoid the interruption of work. Although the Bureau indicated that it expects the administration of the interagency agreements to be greatly improved by one measure that it has taken, its nonconcurrence with this recommendation, together with the rest of its response, provides little assurance that it will implement the controls necessary to ensure that its officials not only are knowledgeable about the acquisition procedures but also follow them.

The circumstances reflected in our audit of the Bureau's Superfund interagency agreements are entirely dissimilar to the situation at issue here. Regarding the Superfund agreements, the Bureau had incurred and paid costs in excess of the amount authorized by the agreements. We therefore recommended that the Bureau seek an amendment to the appropriate agreements to increase its authorized amount so that it could be reimbursed for the funds that it had expended and thus be paid for the work performed, as authorized under Section 107 of the Superfund Act. At no time had the Bureau incurred costs beyond those for which funds were available.

Recommendation 3. Compliance.

Bureau Response. The Bureau stated that it had complied with our recommendation to determine whether the fee was appropriate, because the Contracting Officer had reexamined the conditions surrounding the fee to be paid under Delivery Order 13 and determined that profit was "allowable." Although a prior agreement prohibited profit on subcontracted work, the Bureau stated that the restriction applied only to time and materials type delivery orders, such as Delivery Orders 9 and 12. According to the Bureau, pricing for Delivery Order 13, by contrast, was actual costs for the work, which permits profit or a fixed fee of up to 10 percent under 48 CFR 15.903 (d)(l) (iii). The Bureau concluded that the profit/fee

on Delivery Order 13 was lower than the percentage rate cited in the Code and was therefore allowable. The Bureau further stated that because profit/fee is negotiable and it has reached final agreement on Delivery Order 13, it is bound by its agreement and has no legal recourse.

Office of Inspector General Reply. Based on the Bureau's response, we have three concerns, and we have revised our recommendation to request that the Bureau obtain a determination from the Office of the Solicitor on the propriety of the payment.

First, on February 11, 1994, after the work under Delivery Order 13 was completed, the Corporation negotiated for additional payment, which was reflected in the memorandum for the February negotiations as follows:

> During negotiations, the Corporation presented a strong case for a higher payment since they were not adequately compensated for [a service performed under the contract].

However, as reflected in our report (see Finding C), payment to a contractor for such a service is prohibited by the Federal Acquisition Regulation. Thus, if the payment to the Corporation for Order 13 included costs for such a service, that portion is improper and should be recouped.

Second, we have reviewed the delivery order documents for Orders 9, 12, and 13 and find no significant differences among them. In each, the Corporation billed the Bureau on a time-and-materials basis using rates negotiated in April 1993, which included a provision for profit. We have found no documentation reflecting separate price negotiations prior to the start of Delivery Order 13 specifying that this order was to be based on actual costs rather than time and materials. It would **thus** appear that payment for Order 13 should be made on the same basis as payment for Orders 9 and 12.

Third and related to point two, if Order 13 were to be based on actual costs rather than on time and materials, but the rates billed by the Corporation for Order 13 included profit, then the Corporation's bill is excessive. As noted above, the rates for Order 13 were the same as for Orders 9 and 12, and those rates included profit. Thus, the payment would have been additional profit. The Bureau, then, should seek legal advice from the Solicitor regarding the recoupment of all or a portion of the payment.

OTHER MATTERS

Part of our audit scope included a review of whether the Bureau complied with the Federal Acquisition Regulation when it determined that the Corporation could contract for both a Focused Feasibility Study for water treatment and the follow-on production work for water treatment. According to the Code of Federal Regulations (40 CFR 300.430(e)), "The primary objective of the feasibility study (FS) is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the remedial action options can be presented to a decision-maker and an appropriate remedy selected." The Code (48 CFR 9.505-1) further states that "a contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout or its production shall not (1) be awarded a contract to supply the system or any of its major components or (2) be a subcontractor or consultant to a supplier of the system or any of its major components." The Bureau's Contracting Officer told Corporation officials that this would not be an issue because the Bureau would prepare the detailed specifications for the work. Our review of this matter is ongoing, and the results of our review will be reported at a later date.

SUMMARY OF INTERAGENCY AGREEMENTS USED TO FUND THE SUMMITVILLE MINE SITE CLEANUP

Agreement No.	Authorized Budget	Purpose
DW14953609	$20,086,900	Removal action (emergency response)
DW14953651	51,882,435	Site remediation (primarily water treatment)
DW14953700	6,000,000	Water treatment
DW14953701	5,000,000	Biotreatment of the heap leach pad
DW14953702	13,550,000	Waste removal at the Cropsy site (Phase III)
Total	$96,519,335	

DELIVERY ORDERS ISSUED BY THE BUREAU OF RECLAMATION TO ENVIRONMENTAL CHEMICAL CORPORATION THROUGH JULY 24, 1995

Delivery Order No.[1]	Date of Issue	Initial Order Amount	Final Reported Expenditures[2]	Order Ceiling	Description
1				$118,424	Freeport Center
2				18,750	PCB soil & casing
3				58,804	Precious metals
4				62,325	Byers drum removal
5	12/8/92	$7,000	$5,908	5,908	Initial site assessment
6	12/12/92	95,000	6,815,562	6,815,562	Assume water treatment
9	5/5/93	5,000,000	39,557,451	40,000,000	Develop water treatment
10				26,240	Anderson & Sons Site
11				52,335	Remove temporary storage fat.
12	10/1/93	500,000	1,948,242	2,096,114	Reynolds adit plugging
13	10/4/93	4,000,000	8,554,364	8,554,364	Cropsy (Phase I)
14				776,620	Hansen Container Site
16				27,807	Tech. asst. reclaim barrel site
17				18,708	Drainage & sediment control
18				7,318	Formaldehyde spill
19				140,000	Sandy Site
20				577,782	90th South Battery Site
21	9/22/94	3,000,000	2,349,646	3,000,000	Water treatment/sludge mgt.
22				1,000,000	Vandenberg AFB
23				15,000	Sampling at Midvale Slag
24				TBD	Monitoring at Midvale Slag
25	6/9/95	2,000,000	TBD	2,000,000	Heap leach biotreatment
26	7/24/95	1,000,000	TBD	1,000,000	Cropsy (Phase III)
27				25,897	Groundwater sampling/analysis
28	7/24/95	5,528,546	TBD	5,528,546	Continue water treatment
29				80,000	Sediment control
Total			$59,231,173	$72,006,504	

[1]As of September 14, 1995, nine delivery orders (Nos. 5, 6, 9, 12, 13, 21, 25, 26, and 28) had been issued for the Summitville Mine cleanup. Delivery Orders 7, 8, and 15 have been canceled.

[2]Included in this column are expenditures for delivery orders related to the Summitville Mine cleanup only. On October 13, 1995, we issued Audit Report 96-E-48, which discussed the eligibility of reported expenditures for Federal reimbursement.

UNAUTHORIZED EXPENDITURES BY THE BUREAU OF RECLAMATION

Date	Interagency Agreement Amount Authorized[1]	Bureau Expenditures[2]	Unauthorized Expenditures
March 4, 1993	$2.9 million	$3.3 million	$.4 million
May 31, 1993	7.4 million	7.6 million	.2 million
September 13, 1993	12.6 million	13.4 million	.8 million
April 14, 1994[3]	31.2 million	36.4 million	5.2 million

[1]Interagency Agreement Nos. DW14953609 and DW14953651.

[2]Expenditures were determined from the Bureau's monthly actual charges by job number and cost center and from the Corporation's invoices.

[3]The Bureau's expenditures exceeded funds authorized under interagency agreements for the period March 15 through April 14, 1994. The shortage reached a peak of $5.2 million on April 14, 1994. The Bureau received $9 million under the interagency agreement on April 15, 1994.

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

[NOTE: THE INSPECTOR GENERAL HAS REDACTED FROM THIS RESPONSE PROPRIETARY INFORMATION PERTAINING TO THE CONTRACTOR AND ITS ACTIVITIES.]

IN REPLY REFER TO

NOV 3 0 1

MEMORANDUM

To: Office of Inspector General
Attention: Assistant Inspector General for Audits

From: Stephen V. Magnussen
Acting (Of) Acting Commissioner

Subject: Draft Audit Report on Award and Administration of Contract No. 1425-2-CC-40-12260 with the Environmental Chemical Corporation Related to the Summitville Mine Site Cleanup, Bureau of Reclamation (Audit No. C-IN-BOR-003-95)

The Bureau of Reclamation offers the following comments in response to the recommendations in the subject report. Additional comments are also provided in the attached. Reclamation acknowledges that other contracting methods and procedures could have been utilized on the Summitville Project. However, decisions were made and courses of action were taken in full consideration of the limited information available and the conditions existing at the time, as well as the long range plan for remediation at the site. The report does not fully recognize the potential catastrophic conditions and the imperative nature of the situation. Therefore, because of our perspective and depth of understanding of the project needs, Reclamation does not concur with many of the report's findings and recommendations.

Please note that the Environmental Protection Agency is in the process of reviewing the subject report and this memorandum. As such, our response is subject to change based on EPA's comments.

A. Delivery Orders

We recommend that the Commissioner, Bureau of Reclamation:

Recommendation A.1

Request an audit of the Corporation's current direct costs and indirect cost rates and continue to analyze and consider the need for further auditing for future work.

Response

Complied. By memorandum dated October 12, 1995, the Contracting Officer requested an audit of the cost rates from the Department of the Interior's Office of Inspector General. Although the role of Reclamation and the contractor at Summitville is diminishing and the level of the Upper Colorado (UC) Region's involvement in future hazardous waste cleanup is not clear, the UC Region will continue to consider the need for further audits based on the level and value of work required of the contractor in the future and the timeliness and cost of obtaining the audit information. Additional comments on this issue are attached.

Recommendation A.2

Ensure that future contract rates negotiated with the Corporation, including proposed indirect cost rates for 1995 and future years, are made provisional pending the results of an audit of the rates cited in Recommendation 1 above.

Response

Concur. Resolution of unpriced delivery orders is being made contingent upon the results of the requested cost rate audit. Additional comments on this issue are attached.

The responsible individual for this recommendation is the Regional Director, Upper Colorado Regional Office, Salt Lake City, Utah. The target implementation date for placing contingencies on currently unpriced delivery orders is immediate. The target date for final pricing of affected orders is within 30 days of receipt of the cost rate audit report. However, implementation of this recommendation could be delayed pending resolution of the self-insurance issue.

Recommendation A.3

Conduct a review of the Corporation's purchasing system to determine the improvements needed to increase competition.

Response

Nonconcur. The Contracting Officer will discuss the issues of obtaining and maximizing competition with the contractor. However, Reclamation believes performance of a full Contractor Purchasing System Review is neither prudent nor required at this time. A system review does not assure certification, nor does it assure that a contractor will continue to use acceptable procurement methods. Further, the Federal Acquisition Regulations (FAR) state that a system review is generally not performed for a specific contract. These factors, combined with the declining role of the contractor at Summitville, do not warrant the costs and resources required to perform an in-depth review. The Contracting Officer will continue to monitor the forecast of work and the potential need for a formal system review.

Recommendation A.4

Prepare technical analyses of the Corporation's ability to perform biotreatment of the heap leach pad and all future work at the Mine site.

Response

Nonconcur. Reclamation is not aware of a regulatory requirement to formally perform and document the type of analysis recommended. Reclamation concurs that the UC Region could provide better formal documentation of the rationale and decisions made. That aspect of the Summitville operation is being improved. However, we do not agree with the implication that the Corporation's involvement in biotreatment work was not analyzed. A formal documented analysis is not in the contract file, but prior to taking action, Reclamation and EPA fully discussed the requirements of the work and options before deciding on a final course of action. Considering current conditions related to the delivery order and the staff workload, we do not believe that re-creating those discussions and considerations would be a meaningful and valuable use of resources.

The report appears to have confused reviewing a contractor's proposal with reviewing a contractor's responsibility. It erroneously quotes 48 CFR 15.805-4 as requiring a technical analysis of the contractor and his ability to perform the work. The FAR citation actually requires a technical analysis of the contractor's proposal -- the reasonableness of the means, manners, and methods the contractor plans to utilize in performance. Reviewing a contractor's responsibility and his ability to perform the work is addressed in 48 CFR Part 9. Those regulations are clear that a contractor's resources to perform work include subcontracting and leasing or renting equipment when necessary (Subpart 9.104). The audit report did not note that the contractor competitively obtained the major subcontracts cited in the report.

Recommendation A.5

Ensure, if the technical analyses cited in Recommendation 4 above result in determinations that the Corporation is not able to perform the work requirements, that the contract is awarded to a contractor that is able to perform the work. This may require the Bureau to close out current delivery orders with the Corporation.

Response

Nonconcur. The Contracting Officer on the Summitville Project, in conjunction with EPA, has always sought to use appropriate and feasible methods to procure the work under its direction and will continue to do so. The major rationale for utilizing the Corporation on tasks that ultimately required considerable subcontracting was to coordinate interfacing activities at Summitville, accommodate funding, and minimize the procurement cycles. That helped keep the project on schedule, thus minimizing overall monetary and environmental impacts. Additionally, during the spring and summer of 1994, Reclamation's construction contracting staff in the UC Region decreased by more than 30 percent as a result of Federal downsizing mandates; however, it has realized a notable increase in workload since then. Additional comments on this issue are attached.

Recommendation A.6

Use competitive contracting procedures for the balance of work at the Summitville site unless sole source procurements are justified.

Response

Concur. As stated previously, the Contracting Officer, in conjunction with EPA, has always sought to use appropriate and feasible methods to procure the work under its direction, and will continue to do so in consideration of all factors that affect the Summitville project.

B. Contract Monitoring

Recommendation B.1

We recommend that the Commissioner, Bureau of Reclamation, implement site-specific inspection procedures to provide reasonable assurance that contractors use efficient methods and effective cost controls. Procedures should include verifications of number of personnel, equipment usage, and materials consumed during production; measurements of resources used against contract performance criteria; and provisions to correct deficiencies when inspectors encounter inefficient uses of contractor personnel, equipment, or materials.

Response

Nonconcur. Reclamation believes it is meeting FAR requirements to provide appropriate oversight by using monitoring procedures consistent with those typically used for the type of work and conditions at the site and as required by EPA. Reclamation's inspection staff is experienced and well trained in inspection procedures. The standard procedures used provide sufficient verification of resources used. The work is under regular review and evaluation to determine the appropriateness of the effort and resources being expended and to address any identified deficiencies. Reclamation and EPA will continue to perform regular evaluations. Additional comments on this issue are attached.

C. Contract Financing

We recommend the Commissioner, Bureau of Reclamation, direct appropriate staff to:

Recommendation C.1

Establish controls to ensure that contracting officers do not allow contractors to continue work after funding for a project is no longer available.

Response

Nonconcur. Reclamation has provided as much control as is reasonable in regard to this matter. Contracting Officers, as well as all other acquisition staff and others with substantial acquisition involvement, are knowledgeable of the Federal and agency policies, procedures, and requirements related to contract obligations and funding. The staff are employed for their expertise and are expected to perform in accordance with the applicable standards/laws and apply good business judgement. Therefore, no further controls are considered necessary.

Reclamation acknowledges, and in no way discounts, that there were cash flow problems between EPA and Reclamation that resulted in a period when there were insufficient funds under the inter-agency agreement to cover the costs being incurred by the contractor. The funds were available within EPA; however, internal difficulties delayed the transfer of those funds. At that time, Reclamation's procedures also may have impacted that funding flow. Since that time, there have been no further deficiencies encountered under interagency agreements related to the Summitville project. Additionally, Reclamation has delegated authority and responsibility for hazardous waste agreements to the Reclamation office where it is being administered, which will greatly improve the administration of those agreements.

The EPA was called to Summitville to prevent a catastrophic release of hazardous substances into the environment. It was imperative that the work at the site continue in order to preclude more environmental damage, keep the project on schedule, and minimize future project costs. Allowing the contractor to proceed with the work in the absence of adequate funds in the interagency agreement (IAG) was never done with disregard of the potential problems that could be incurred. Additionally, EPA and Reclamation were acting within the authority provided under applicable laws and regulations. Leading up to and during the period noted, there were frequent discussions between UC Region's contracting staff and EPA's Remedial Project Manager. The EPA had the funds available, and the continuation of work was always at their request and with their authorization. Laws and regulations

applicable to this type of action provide for reimbursement to assisting agencies when EPA authorizes the expenditures. The Economy Act, under which IAGs are authorized, also contains provisions for the servicing agency (Reclamation in the immediate case) to receive payment for actual costs after the supplies or services have been furnished. The funds necessary to cover the unfunded Summitville expenditures were authorized by EPA and the IAG was amended accordingly.

Additionally, your office audited Reclamation's Superfund IAGs for the years 1988 to 1993. Those audits indicate that each year the OIG found instances of costs incurred that were not covered by the IAGs. The recommendations required Reclamation to obtain amendments from EPA for costs incurred that were greater than those specifically authorized by the agreements and not reimbursed by the agency.

Recommendation C.2

Coordinate with the Agency the amount, availability, and timing of funding so as to avoid the interruption of work on the project.

Response

Complied. EPA and Reclamation have and will continue to plan and coordinate the work at Summitville in full consideration of all affecting factors and so as to avoid interruption of the work.

Recommendation C.3

Determine whether payment of the fixed fee of [redacted] was appropriate. If the payment was not appropriate, the [redacted] should be recovered from the Corporation.

Response

Complied. The Contracting Officer has reexamined the conditions surrounding the profit/fee paid to the Corporation under Delivery Order No. 013, and has found profit to be allowable. The audit references prior agreement to no profit allowances on subcontracted work; however, that agreement was specific to time and materials type delivery orders, such as Nos. 009 and 012. Pricing of Delivery Order No. 013 was based on actual costs for the work. Profit or a fixed fee is allowable on that type of contract action and is limited to 10 percent by regulation (48 CFR 15.903). Therefore, the [redacted] percent profit/fee allowed in the order was within regulation.

Profit/fee is a negotiable item, and therefore, the rate/amount allowed is up to the professional judgement of the negotiator(s) in consideration of associated circumstances and guidelines. Final agreement on the price of the delivery order has been made and the required documents signed by the contractor and Reclamation, so the agreement is binding on both parties. Since profit/fee is allowable for the Delivery Order and the parties are legally bound by the agreement, there is no need nor legal course of action to pursue recovery.

We regret the number of issues with which we do not concur and hope that any future audits will reflect a more collaborative effort. If you have any questions or require additional documentation, please contact Luis Maez at (303) 236-3289, extension 245.

All Deletions X-4

Attachment

cc: Environmental Protection Agency, Region 8, 999 18th Street, Denver CO 80202
Attention: Mr. Max Dodson, Director, Office of Ecosystem Protection and Remediation
Assistant Secretary - Water and Science, Attention: Margaret Carpenter
Office of Financial Management, Attention Wayne Howard

Additional Comments
Draft Report of the Summitville Mine Site Cleanup
(C-IN-BOR-003-95)

BACKGROUND

In the fifth paragraph of the Background, the report states that the subject contract was awarded with a limit ". . . not to exceed $500,000 . . . ." We have been unable to find where such a limitation is specified; and can only find that amount in the Price Negotiation Memorandum for the initial contract award. In the memorandum, that amount is stated to be the "estimated" contract amount. Since the contract is a multi-year instrument, that amount represented an estimate of the total accumulated orders for the first year and in no way represents a "not to exceed" limitation. We recommend the statement be removed.

A. DELIVERY ORDERS

In the first paragraph of Delivery Orders, the report states that the over-recovery of contract costs was ". . . in addition to profit which was based on [redacted] percent of the total direct costs." We are unable to find this language in the contract, delivery order documents, or the associated audit report of the contractor's billings. The rate for profit or amount of fee and the base to which it is applied has varied depending on the type of action (time and materials, cost-plus-fixed-fee, etc.) and nature of the work. We recommend the statement be revised to read, "This amount was in addition to any profit paid directly under the delivery orders."

__Recommendation A.1__

Reclamation does not agree with the audit report regarding the level and adequacy of the analyses performed on the contractor's proposal. Upon review of the contract files, the Contracting Officer believes that the Contracting Officer and staff responsible for establishing the contract acted according to the Federal Acquisition Regulations in determining the reasonableness of the contract rates utilizing what information was available at the time. The actual work performed at Summitville was not envisioned at the time the contract was awarded and it was anticipated that the orders under the contract would be relatively small and intermittent. Analysis of the contractor's proposal was performed at a level considered reasonable for the anticipated work.

__Recommendation A.2__

The over-recovery of indirect costs reported by the report may be considerably overstated; and thus, the results of the forthcoming cost rate audit may not provide as extensive a change as the subject audit report indicates. The contractor's [redacted] were disallowed by the subject audit and represent [redacted] million [redacted] percent) of the reported $4.1 million over-recovery of indirect costs. Without that disallowance, there would be no significant findings; the contractor's overall profit rate, including the other over-recoveries identified, would be about [redacted] percent -- not necessarily unreasonable. The FAR does not consider [redacted] unallowable but requires a contractor to obtain official approval of its program from a cognizant Administrative Contracting Officer (48 CFR 28.308). [redacted], and is currently involved in the FAR required approval process with the Department of Defense. If that agency approves the [redacted] [redacted], the costs would be considered allowable and we would

All Deletions X-4

2

also accept those findings. It appears the only basis for the audit's total disallowance of [redacted] is the lack of current approval. X-4

Recommendation A.5

The report maintains that to reduce the procurement cycle time, Reclamation could have invoked the provisions of 48 CFR 6.302-2 for procuring under other than full and open competition for reasons of unusual and compelling urgency. However, the provision only allows the Government to limit the sources sought, not to sole source the procurement as the report may indicate. Further, it does not eliminate the need to provide adequate time to prepare and review proposals. The provisions also require higher level justifications and approvals, which add to the procurement time frames unless determination is made that they can be prepared post-award.

Also, the comparison of the initial Cropsy waste removal performed by the Corporation to the follow-on contract to Rust Remedial Services fails to consider numerous factors that make the tasks incomparable. Though each action was for removal of material from the same general area, each had different requirements, yet the audit analysis does not extract the costs for unrelated work before determining the alleged unit prices. Another significant variable is that each action was performed under very different climatic and environmental conditions. The U.S. Army Corp of Engineer's equipment cost guides consider up to a 40 percent increase in operation and maintenance costs for severe use conditions. This is in addition to the cost increases due to decreased productivity of both equipment and personnel resulting from those conditions. The report also infers that the Corporation's costs would have been less had they owned the necessary equipment yet compares the Corporation's costs to those of Rust Remedial Service who rented the majority, if not all, of their heavy construction equipment. Additionally, the costs of mobilizing owned equipment from a considerable distance to the site often makes renting or leasing locally available equipment more cost effective. Therefore, we believe the cited comparison is irrelevant.

B. CONTRACT MONITORING

Recommendation B.1

Reclamation does not agree with the contention that written procedures were not established and that the contractor's performance was not documented. The daily report for water treatment is self-explanatory, and the detail of its format provides a written procedure of items to be checked, as do the other inspection reports used at the site.

Water treatment facilities typically operate with minimal inspection other than quality control tests on effluent. That testing is being performed more vigorously than normal at Summitville because of the stringent standards imposed on the site by the State of Colorado. Compliance with those standards was also being independently checked downstream of the site by the Technical Assistance Group (a liaison group composed of local community and industry representatives) and U.S. Geological Survey. Since effluent monitoring provides the primary monitoring for the facility and full-time inspection is not necessary, plant inspection can be incorporated into the inspection efforts for other activities at the site.

The water quality standards and monitoring also control the amount of materials used in water treatment. Over-usage of those chemicals has as detrimental an effect on the water quality as under-usage, so the standards inherently provide consumption control. Additionally, lack of alternative uses for the materials at the site; packaging, transportation, and delivery restrictions; lack of alternative markets

in close proximity to Summitville; and the risks and difficulty of transporting materials back down the 18 miles of mountainous access to the site virtually eliminate the possibility of the material being used for other purposes or stolen.

Because of the isolated location of Summitville, all contractors are required to shuttle staff to and from the site. Also, since it is a designated hazardous waste site, OSHA regulations require logging the date and time of all individuals entering or leaving the site. These two conditions create a proven method of verifying personnel at the site and assist the inspection staff in systematic and regular verification of those resources.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

Ref: 8EPR-SR-A

December 12, 1995

Charley Calhoun, Regional Director UC-100
US Bureau of Reclamation
Upper Colorado Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

EPA COMMENTS ON BUREAU RESPONSE TO DRAFT AUDIT REPORT

Ref: (a) S.V.Magnussen:OIG 11/22/95 for Bureau responses
(b) DOI OIG Draft Audit Report (C-IN-BOR-003-95)

Dear Charley:

The Environmental Protection Agency (EPA) offers the following comments after reviewing your responses provided to us as memorandum ref.(a) to the subject audit report [ref (b)]. We have completed our review of the audit report and share your concerns with some of its findings. We fully support your position where you felt it necessary to state your nonconcurrence with many of the report's findings and recommendations.

We appreciate your consideration in allowing us to comment on your responses. We understand the following comments will be forwarded to the DOI OIG.

C. *Contract Financing*

__Recommendation C.1__

Establish controls to ensure that contracting officers do not allow contractors to continue work after funding for a project is no longer available.

__EPA Comment__

Although EPA had sufficient funds available for the Summitville IAG, a reprioritization process had to take place to physically send funds to Reclamation. This process was very time-consuming, thus delaying the transfer and creating the noted cash flow problems. While EPA did not and could not require Reclamation to remain at the Summitville site during that time, it has been

a

EPA's assessment that Reclamation acted appropriately in each instance and was, therefore, fully reimbursed for costs incurred during those times. For Reclamation to have abandoned the site, even for a few days, would have destroyed ALL water treatment capability at the site and doomed the Alamosa watershed to total, if not catastrophic, destruction of an annual $200 million agricultural industry. If EPA had decided instead to recover the Alamosa watershed after such a cessation, costs incurred would have been much higher and restoration less effective.

We trust you will understand our need to add the above comments to your response to these issues. We hope that the final audit report will contain our comments and reflect our Agency's interest. We remain committed to our collaborative effort, both in the Summitville cleanup and in this audit. If you have any questions or require additional documentation, please contact Laura Williams at (303) 312-6660.

Sincerely,

Max H. Dodson
Assistant Regional Administrator
Ecosystems Protection and
Remediation Division

cy: Luis Maes, Audit Liaison Officer D-5010
US Bureau of Reclamation
Denver Technical Center, Bldg 67
PO Box 25007
Denver, CO 80225-0007

Dale Vodehnal
Barry Levene
Mike Ward(UC-800)
Laura Williams

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
Al, A.2, A.6, and C.2	Implemented	No further action is required.
A.3, B.1, and C.1	Unresolved	Reconsider the recommendations, and provide a plan identifying actions to be taken, target dates for implementation, and titles of officials responsible for implementation.
A.4, A.5, and C.3	Unresolved	Respond to the revised recommendations, and provide a plan identifying actions to be taken, target dates for implementation, and titles of officials responsible for implementation. If nonconcurrence is indicated, provide specific reasons for the nonconcurrence.

ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
THE OFFICE OF INSPECTOR GENERAL BY:

Sending written documents to: | Calling:

Within the Continental United States

U.S. Department of the Interior
Office of Inspector General
1550 Wilson Boulevard
Suite 402
Arlington, Virginia 22210

Our 24-hour
Telephone HOTLINE
1-800-424-5081 or
(703) 235-9399

TDD for hearing impaired
(703) 235-9403 or
1-800-354-0996

Outside the Continental United States

Caribbean Region

U.S. Department of the Interior
Office of Inspector General
Eastern Division - Investigations
1550 Wilson Boulevard
Suite 410
Arlington, Virginia 22209

(703) 235-9221

North Pacific Region

U.S. Department of the Interior
Office of Inspector General
North Pacific Region
238 Archbishop F.C. Flores Street
Suite 807, PDN Building
Agana, Guam 96910

(700) 550-7279 or
COMM 9-011-671-472-7279

Toll Free Numbers:
1-800-424-5081
TDD 1-800-354-0996

FTS/Commercial Numbers:
(703) 235-9399
TDD (703) 235-9403

HOTLINE

1550 Wilson Boulevard
Suite 402
Arlington, Virginia 22210